

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

<b>IN THE MATTER OF THE PETITION OF</b>	)	
<b>DELAWARE DIVISION OF THE PUBLIC</b>	)	
<b>ADVOCATE TO REDUCE THE RATES OF</b>	)	
<b>REGULATED UTILITIES AS A RESULT</b>	)	<b>PSC DOCKET NO. 17-1240</b>
<b>OF THE TAX CUTS AND JOBS ACT OF</b>	)	
<b>2017'S REDUCTION IN CORPORATE</b>	)	
<b>INCOME TAXES AND OTHER TAX</b>	)	
<b>CHANGES (Filed December 27, 2017)</b>	)	

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**MOTION OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE  
TO DIRECT REGULATED PUBLIC UTILITIES TO CREATE  
REGULATORY LIABILITIES FOR BENEFITS  
ARISING FROM THE 2017 TAX CUTS & JOBS ACT**

The Delaware Division of the Public Advocate ("DPA") hereby moves the Delaware Public Service Commission (the "Commission") for an order directing all rate-regulated utilities to accrue regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the 2017 Tax Cuts & Jobs Act (the "2017 Tax Act") effective February 1, 2018, and in support thereof states as follows:

1. On December 22, 2017, the President signed the 2017 Tax Act, which became effective January 1, 2018.
2. On December 28, 2017, the DPA filed a petition requesting the Commission to direct all regulated utilities to file estimates of their determination of the 2017 Tax Act's effects on their cost of service for the most recent test year available (including new rate schedules) and propose procedures for changing rates to reflect those impacts on or before March 31, 2018, and if the Commission determined that any utility's rates required reduction, to open a docket for each such utility to revise rates to reflect those impacts.
3. On January 16, 2017, the Commission voted 4-0 (Chair Winslow absent) to grant the DPA's petition. The Commission agreed that the rate-reducing benefits of the 2017 Tax Act

should flow through to ratepayers. It ordered its rate-regulated utilities to file estimates of their determinations of the 2017 Tax Act's effects on their cost of service for their most recent test year available and propose procedures for changing rates to reflect those effects with the Commission on or before March 31, 2018. Thereafter, if the Commission determines that a utility's rates require reduction, it will open a docket for that utility and establish a procedural schedule for conducting an evidentiary hearing regarding the 2017 Tax Act's impacts on the utility's operations and existing rates. *See* Order No. 9166 (Jan. 16, 2018) in this docket.

4. In order to preserve the rate-reducing effects of the 2017 Tax Act until such time as the Commission approves new rates, the Commission must authorize the creation of a regulatory liability. Otherwise, the prohibition against retroactive ratemaking will deny ratepayers the benefits that accrue from the 2017 Tax Act between its effective date and the date on which the Commission authorizes new rates reflecting those benefits. *See Diamond State Telephone Co. v. Public Service Commission*, 468 A.2d 1285, 1298 (Del. 1983).<sup>1</sup> Just as utilities may not recoup past losses in future rates, neither may the Commission approve future rates to recoup benefits that would have inured to ratepayers in the time between rate cases in the absence of an order authorizing deferred accounting.

5. This Commission has consistently required a party seeking to establish a regulatory asset (that is, to defer current costs for recovery in a future proceeding) to request and receive the Commission's approval before it can record the costs in a deferred account. It did so most recently in Order No. 9125 (October 31, 2017). Similarly, the Commission must approve the DPA's request that it direct its rate-regulated utilities to accrue a regulatory liability in order

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<sup>1</sup> “[R]ates are exclusively prospective in application and ... future rates may not be designed to recoup past losses’ in the absence of express legislative authority.” *Id.* at 1298.

for the utilities to defer the monetary benefits of the 2017 Tax Act into a deferred account for subsequent treatment in a future rate case.

7. Therefore, in order to preserve the benefits of the cost reductions that the 2017 Tax Act may confer, the DPA respectfully requests the Commission to direct its rate-regulated utilities to accrue regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the changes in the deferral income tax laws. The event leading to this request – the passage of the 2017 Tax Act – is extraordinary; the last time a federal law had this dramatic an effect was in 1986, with the passage of the Tax Reform Act. The tax reduction occasioned by the 2017 Tax Act from 35% to 21% clearly benefit ratepayers by reducing one of the elements of the cost of service that goes into determining a utility's revenue requirement by 14%.

8. Having determined that ratepayers should receive the entire benefit of the reduction in the federal corporate income tax rates as a reduction in the cost of service, the Commission must effect that determination by directing its regulated utilities to create regulatory liabilities for those benefits.

**WHEREFORE**, the DPA respectfully requests the Commission to direct all Delaware rate-regulated public utilities to accrue regulatory liabilities, starting on February 1, 2018, to reflect the Delaware jurisdictional revenue requirement impacts of the changes in the federal corporate income tax rate occasioned by the 2017 Tax Act.

Respectfully submitted,

/s/Regina A. Iorii

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Dated: January 19, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2018, I caused a copy of the attached **MOTION OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE TO DIRECT REGULATED PUBLIC UTILITIES TO CREATE REGULATORY LIABILITIES FOR BENEFITS ARISING FROM THE 2017 TAX CUTS & JOBS ACT** to be filed with the Delaware Public Service Commission using Delafile and to be served on the following persons by electronic mail:

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Dated: January 19, 2018

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